

# BRADY MATERIAL DISCLOSURE

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<i>Effective Date:</i> <b>August 25, 2020</b>	<i>Directive Number:</i> <b>10-18-1</b>	
<i>Special Instructions:</i> NONE		
<i>Distribution:</i> <b>All Sworn &amp; Civilian Personnel</b>	<i>Last Re-Evaluation Date:</i>	<i>Total Pages:</i> <b>4</b>

## I. PURPOSE

This general order establishes guidelines and procedures governing the rules of information as it pertain to its duty to disclose all known exculpatory or impeaching evidence in criminal proceedings and the disclosure of information.

## II. POLICY

The Cheswold Police Department will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called "Brady information") to a prosecuting attorney for purposes of evaluating and disclosing the information to the defense.

## III. DEFINITIONS

Brady information – The prosecution has a duty to disclose all known exculpatory or impeaching evidence to the accused in a criminal proceeding. *Brady v. Maryland*, 373 U.S. 83 (1963) requires that prosecutors disclose exculpatory or impeaching evidence to a defendant if the evidence is material to guilt or punishment. Exculpatory evidence includes evidence reflecting on whether the government's witnesses against the accused are credible, which might be used by the defendant's attorney at trial to impeach the character or credibility of such witnesses. *Giglio v. U.S.* (1972). Under *U.S. v. Agurs*, 427 U.S. 97 (1976), prosecutors have a duty to disclose such evidence to the defense without a request from the defense.

In *Kyles v. Whitley*, 514 U.S. 419 (1005), the Supreme Court held that the prosecution has an affirmative duty to learn of any exculpatory or impeaching evidence favorable to the defendant from others acting on behalf of the government, including the police. These court cases extend to the members of the Cheswold Police Department who may be required to testify in criminal proceedings as part of their duties.

In addition, state statutes also create a duty on any public investigative, law enforcement, or other public agency participating in investigating any homicide or non-homicide felony offense to provide the authority prosecuting the offense all investigative material, including but not limited to reports, memoranda, and field notes, that have been generated by or have come into the possession of the investigating agency concerning the offense being investigated whether that information tends to prove or to negate the guilt of the accused of the offense charged or reduce his or her punishment for the homicide offense. This obligation to furnish exculpatory evidence exists whether the information was recorded or documented in any form.

Every investigative and law enforcement agency in this State is required to adopt policies to ensure compliance with these standards.

#### **IV. DISCLOSURE OF INVESTIGATIVE INFORMATION**

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information or of information affecting the credibility of a witness any time after submission of a case, that member or the handling investigator must prepare and submit a supplemental written report documenting such information as soon as practicable.

The Chief of Police or their designee will monitor these supplemental reports and shall promptly process and transmit to the prosecutor's office. If information is believed to be privileged or confidential (e.g., confidential informant or protected personnel files), the member should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed including any notice requirements to the member.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, that officer should address the issue with the Chief of Police, or their designee.

Supervisors who are uncertain about whether evidence or facts are material and should address the issue in a written memo to the prosecutor on the case or their supervisor. A copy of the memo should be forwarded to the Chief of Police, or their designee, and retained in the Department's case file.

#### **V. DEPARTMENT RULES OF CONDUCT**

**Truthfulness:** Members and employees shall not knowingly make an untrue statement in any communication, written or oral, official or unofficial report, to supervisor or any other member which relates to the performance of any member's official duties.

Members responding to superiors or to questions posed during formal or informal misconduct investigations should candidly and truthfully answer all questions related to the scope of employment and operations of the Cheswold Police Department. An administrative finding involving untruthfulness or dishonesty may subject the employee to immediate termination of employment. (SEE Section II, 2.42 under the Department's Code of Conduct).

## **VI. DISCLOSURE OF PERSONAL INFORMATION**

Should the prosecuting attorney or defense counsel file a motion to inspect the personnel file of any officer, the Chief or his or her designee should request the assistance of the prosecuting attorney and/or municipal attorney to respond to the motion and facilitate the inspection or release, if any, of the potential Brady information. The member involved shall be informed of the request by the Chief of Police or his designee.

## **VII. CRIMINAL CASES**

1. The Chief or his or her designee shall promptly disclose to the appropriate federal or state prosecutors the following potential Brady information relating to a police member that is the reporting member or may be called as a witness in a hearing or case:

- A. Any department-sustained finding of misconduct related to truthfulness or dishonesty;
- B. Any criminal convictions involving acts of dishonesty;
- C. Any present allegations of misconduct under investigation involving truthfulness or dishonesty.

2. The member involved shall be notified that the material will be disclosed to the prosecutors by the Chief of Police or his designee. It will then be the duty of the prosecutor to determine whether the information should be provided to the defense or reviewed by the judge presiding over a matter. In the event a member believes that a prosecutor is unaware of information that may be considered Brady material, that member will notify their supervisor and/or the prosecutor of the existence of the information sufficiently in advance of their presentation or testimony at the hearing so that a decision regarding disclosure of the information can be made by the prosecutor.

## **III. DUTY TO NOTIFY SUPERVISOR (when applicable)**

Members have a duty to report any information described in the section above to their immediate supervisor and through their chain of command to the Chief of Police if the investigation or charges are brought by an outside agency or jurisdiction. Any current member who has been notified that he/she has been identified as subject to Brady guidelines is required to inform any supervisor that is involved in assigning him/her to any task that he/she is a Brady status employee.

## **IX. CIVIL CASES**

Any current member who has been notified by the Chief and/or prosecutor that he/she has been identified as subject to Brady guidelines, or is notified that he/she is under investigation for a matter that could result in being subject to Brady guidelines, shall notify any attorney that is representing the member or the Department in a civil case of his/her Brady status.

## **X. INELIGIBILITY FOR HIRE/RE-HIRE**

Members identified as subject to Brady guidelines that resign or are terminated will not be eligible for rehire. Applicants subject to Brady guidelines based on previous employment with other agencies or departments are ineligible for hire.

## **XI. INVESTIGATING BRADY ISSUES**

If the Department receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Department's internal investigations policy.

## **XII. CONTINUING OBLIGATIONS**

The duty to disclose exculpatory information under this policy to the defense continues throughout the course of the prosecution of the case and remains after the defendant's conviction.

## **XII. TRAINING**

Department members will receive periodic training on the requirements of this policy.

ORDERED and EXECUTED this 25<sup>th</sup> day of August, 2020



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Christopher Workman  
Chief of Police